

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NOVARTIS PHARMACEUTICALS
CORPORATION and ASTEX
THERAPEUTICS LTD.,

Plaintiffs,

v.

MSN PHARMACEUTICALS INC. and
MSN LABORATORIES PVT. LTD.,

Defendants.

C.A. No. 21-870-JLH
(CONSOLIDATED)

PLAINTIFFS' SUR-REPLY POST-TRIAL BRIEF

GLOSSARY

Term	Definition
'355 Patent	U.S. Patent No. 8,415,355 (JTX0002)
'630 Patent	U.S. Patent No. 8,962,630 (JTX0004)
Brain	WO 2007/140222 (JTX0042)
Compound 338	Compound illustrated in Example 338 of Brain, having the structure: (See JTX0042-0152)
IC ₅₀	Half-maximal inhibitory concentration
<i>Italicized text</i>	All emphasis added except where noted otherwise
µM	Micromolar
MSN	Defendants MSN Pharmaceuticals Inc. and MSN Laboratories Pvt. Ltd.
<i>Nomiya</i>	<i>Application of Nomiya</i> , 509 F.2d 566 (C.C.P.A. 1975)
Novartis or Plaintiffs	Plaintiffs Novartis Pharmaceuticals Corporation and Astex Therapeutics Ltd., collectively
Rep. Br.	MSN's Reply Post-Trial Brief
Res. Br.	Novartis's Responsive Post-Trial Brief

Novartis has called to the Court's attention the lack of any prior support for MSN's new "Table 4" data admitted prior art theory. Res. Br. 10-12. In an apparent attempt to escape waiver under Fed. R. Civ. Pro. 26(a)(2) & 37(c)(1)), MSN has scoured the underlying record and attempted to provide *some* support in a footnote. Rep. Br. 2 n.1. Specifically, MSN argues that its Table 4 argument appears in its Notice Letter. That is inaccurate. MSN argues that its Notice Letter states that "a POSA would have been highly motivated to consider Compound 338 of Brain [PCT], including based on its inhibitory activity and selectivity to Cdk4. *See* Brain [PCT] at 197." *Id.* (emphasis removed). But MSN expressly cites the source of that data as Brain, not Table 4 of the '355 patent (and the Table 4 data is *not* present in Brain). MSN goes on to say that "This compound is admitted prior art in the '355 patent (see '355 Patent at 17:34-18:60, "compound 200"), with an IC50 of 0.005 μ m against Cdk4." *Id.* This statement says nothing about whether that specific IC50 data from Table 4 was admitted prior art. MSN's next argument proves this point: "A POSA could have obtained more exact IC50 values for [Compound 338], like those in the '355 Patent, without an undue burden." *Id.* (citing MSN's Invalidity Contentions). There, MSN does not directly argue that the Table 4 data is itself in the prior art, only that more exact IC50 values like those listed in Table 4 could be obtained through experimentation. This argument does not meet the legal standards for obviousness or for how one determines a proper lead compound. Res. Br. 6-7, 12-20. MSN's attempted reliance on *Nomiya* is legally flawed (Res. Br. 18-20), and does nothing to absolve MSN of the notice requirements under Rules 26 and 37.

If MSN had put Novartis on notice of its new arguments, it should be able to easily point to clear supporting statements in either its invalidity contentions, expert reports, the pretrial order, or even trial—it has not, because it cannot. Novartis continues to assert that MSN's new Table 4 theory is untimely and prejudicial and should be excluded pursuant to Rules 26 and 37.

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Respectfully submitted,

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